

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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MICHAEL L. CARPENTER,

Petitioner,

v.

VERMONT DEPARTMENT OF
CORRECTIONS and BENNINGTON
DISTRICT COURT,

Respondents.

Case No. 2:21-cv-111

**OPINION AND ORDER
ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION,
GRANTING RESPONDENTS' MOTION TO DISMISS, AND
DISMISSING PETITION FOR WRIT OF HABEAS CORPUS**

(Docs. 1, 6, & 10)

This matter came before the court for a review of the Magistrate Judge's July 27, 2022 Report and Recommendation ("R & R") (Doc. 10), in which the Magistrate Judge recommended that the court grant the motion to dismiss self-represented Petitioner Michael L. Carpenter's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by Respondents Vermont Department of Corrections ("DOC") and Bennington District Court. (Docs. 1 & 6.) No party has filed an objection to the R & R, and the time period to do so has expired.

Plaintiff is self-represented. Respondents are represented by Assistant Attorney General Jared C. Bianchi.

A district judge must make a de novo determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); accord *Cullen*,

194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a reports and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985).

In his twenty-two-page R & R, the Magistrate Judge carefully reviewed the factual allegations, procedural history, potential causes of action, and requests for relief set forth in Petitioner's petition and correctly recommended dismissal because the petition was untimely, equitable tolling does not apply, and it would not constitute a miscarriage of justice to deny the petition. *See* 28 U.S.C. § 2244(d)(1)(A), (B), (D). The court agrees with this well-reasoned conclusion and thus does not address the additional bases for dismissal the Magistrate Judge recommended.

CONCLUSION

For the foregoing reasons, the court hereby ADOPTS the Magistrate Judge's R & R (Doc. 10) as the court's Opinion and Order and GRANTS Respondents' motion to dismiss. (Doc. 6.)

Pursuant to Fed. R. App. P. 22(b)(1) and 28 U.S.C. § 2253(c)(2), the court DENIES Petitioner a certificate of appealability in this matter because Petitioner has failed to make a substantial showing of the denial of a constitutional right.

SO ORDERED.

Dated at Burlington, in the District of Vermont, this 23rd day of August, 2022.



Christina Reiss, District Judge
United States District Court